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NEVADA'S COMMUNITY PROPERTY LAWS

Legislative Commission of the
Legislative Counsel Bureau
State of Nevada

October 16, 1970

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NEVADA'S COMMUNITY PROPERTY LAWS

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Assembly Concurrent Resolution No. 19—Committee on Legislative Functions

FILE NUMBER 139....

ASSEMBLY CONCURRENT RESOLUTION—Directing the legislative commission to study the state community property laws and to report to the legislature.

WHEREAS, The community property laws of the State of Nevada have been in effect without substantial change since the early part of the twentieth century; and

WHEREAS, The status of the individual spouse in relation to society and to the marriage has changed; and

WHEREAS, Many inequities and contradictions persist in the community property laws of the State of Nevada; now, therefore, be it

Resolved by the Assembly of the State of Nevada, the Senate concurring, That the legislative commission is hereby directed to conduct a study of the community property laws of the State of Nevada and to report the results of that study to the 56th session of the legislature of the State of Nevada.

REPORT OF THE LEGISLATIVE COMMISSION

TO THE MEMBERS OF THE 56TH SESSION OF THE NEVADA LEGISLATURE:

This report is submitted in compliance with Assembly Concurrent Resolution No. 19 of the 55th Session, which directed the legislative commission to study the community property laws of the State of Nevada. On June 20, 1969, the legislative commission appointed for this purpose a subcommittee consisting of Assemblyman Margie Foote, chairman, Senator Len Harris, and Assemblymen Eileen B. Brookman and Zelvin D. Lowman.

This subcommittee studied the laws of several states and made comparisons of such laws with those of this state. The product of their efforts was approved by the legislative commission on October 16, 1970.

The subcommittee's report is attached for your examination.

Respectfully submitted,

Legislative Commission
State of Nevada

Carson City, Nevada
October 16, 1970

REPORT OF THE LEGISLATIVE COMMISSION'S SUBCOMMITTEE
FOR STUDY OF COMMUNITY PROPERTY LAWS

The 55th session of the legislature of the State of Nevada adopted Assembly Concurrent Resolution No. 19, which provides as follows:

> ASSEMBLY CONCURRENT RESOLUTION--Directing the legislative commission to study the state community property laws and to report to the legislature.
>
> WHEREAS, The community property laws of the State of Nevada have been in effect without substantial change since the early part of the twentieth century; and
> WHEREAS, The status of the individual spouse in relation to society and to the marriage has changed; and
> WHEREAS, Many inequities and contradictions persist in the community property laws of the State of Nevada; now, therefore, be it
> Resolved by the Assembly of the State of Nevada, the Senate concurring, That the legislative commission is hereby directed to conduct a study of the community property laws of the State of Nevada and to report the results of that study to the 56th session of the legislature of the State of Nevada.

In response to this directive, the legislative commission created a subcommittee for study of community property laws composed of Assemblyman Margie Foote, chairman, and Senator Len Harris, Assemblyman Eileen B. Brookman and Assemblyman Zelvin D. Lowman, members.

The subcommittee was supplied with a large amount of material relating to the community property laws of other states and the general theory of the community property system. It was the subcommittee's unanimous opinion that inequities have arisen in the community property laws of this state that can be cured by legislation. However, these inequities exist in the relative rights of both spouses, and to attempt to remedy the various problems in a piecemeal fashion may create additional and more burdensome problems.

The State of Texas recently overhauled its community property laws and the results, on their face, appear to be commendable. The subcommittee recommends that continued study be made on the necessity to revise our community property laws with particular attention

paid to the manner in which the courts of Texas treat their new community property code. To attempt at this time to overhaul our community property laws without the benefit of some court precedent appears to be foolhardy.

The subcommittee reviewed the recent Nevada supreme court decision of Bailey v. Bailey, which was filed on June 18, 1970. The main issue was the responsibility of the estate of a deceased father to continue child support payments ordered by a divorce court. The court stated that, under the facts of the case, the obligation does not survive the death of the obligor. The subcommittee recommends that legislation be prepared and enacted providing that such payments shall not be a charge against the estate. A portion of that opinion is reprinted here to show the many problems attendant upon such legislation.

> 4. While our statute provides an escape from the harshness of the common-law rule, a host of unanswered questions spring up when a child support grant is enforced against a decedent's estate. For example, should not the obligation of the father's estate run equally to all his children, not just those whom he is under a court order to support, but those who are living in his household or children by a subsequent marriage? Are the children he is ordered to support merely general creditors of his estate, or do they enjoy some priority? Since his children are entitled to family allowance during the course of the administration of his estate (In re Foster's Estate, 47 Nev. 297, 220 P. 734 (1923)), is the estate entitled to a credit for that allowance against the sum ordered paid for support? May the amount owed under a child support order be modified after the father's death, and if so, does the child, the surviving parent, or the estate seek the modification? If modification is permitted, which court has jurisdiction to entertain the request? Is it the probate court, the court in which the decree was ordered, or the court in which the suit is brought seeking the modification? Are provisions for the child made by the father, such as life insurance, trust benefits, bequests, or intestate succession in addition to or a credit against the support obligation? Must the administration of the estate be kept open during the minority of the child, or should the sums found due for support be placed in a trust account or be paid over to the child's guardian? Are benefits accruing to the child from the father's death, such as social security payments, veterans benefits, pension plans, employee death benefits, in addition to or a credit against the support payments?

5. It appears to us that answers to these questions and others which have not come to our minds can best be answered, if at all, by a comprehensive statutory enactment. This is the first case involving this issue to arise in this jurisdiction in over 100 years. According to our past experience, it would require decades to evolve sound meaningful rules on a case-by-case basis. Accordingly, we urge caution in making child support awards enforceable against a father's estate and suggest that other available methods be utilized until such time as the legislature acts. A father can contract to permit support payments to be a charge against his estate. NRS 123.080; e.g., Newman v. Burwell, 15 P.2d 511 (1932); Stone v. Bayley, 134 P. 820 (Wash. 1913); In re Fessman's Estate, 126 A.2d 676 (Pa. 1956). A court can require the father to maintain or purchase life insurance upon his life, with the child as beneficiary, or require that a trust be set up for the benefit of the child. See NRS 125.140. These or similar alternatives seem preferable to us to the uncertainties encountered in making a child support award enforceable against the father's estate.

6. In commending the subject of the obligation of fathers for the support of their children to the legislature, it may be helpful to set forth the reasoning of the courts in denying or granting enforcement of child support awards against decedents' estates. Courts refusing to charge the father's estate cite as their main reasons (1) it would place children given to the custody of their mother after a divorce in a stronger position than children whose parents never divorce, children who are given to the father's custody, or children of a subsequent marriage; (2) it would prevent the father from exercising his right to disinherit those children given to the custody of their mother, thus limiting the father's testamentary disposition of his property.

Courts charging the father's estate give as their reasons, (1) the child may become a public charge, and (2) because of hostility toward the mother, or from other causes, there is a danger the father will disinherit his children and thus leave them to be supported by their mother without any aid from his estate.

Respectfully submitted,

Margie Foote, Chairman
Len Harris
Eileen B. Brookman
Zelvin D. Lowman

October 16, 1970

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